

Anthony J. Marchetta
Richard H. Brown
DAY PITNEY LLP
7 Times Square
New York, NY 10036
Telephone: (212) 297-5800
Facsimile: (212) 916-2940
amarchetta@daypitney.com
rbrown@daypitney.com
Attorneys for All Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JARRETT JENKINS, EMMOT STEELE and
FRANCES ROYAL, on behalf of themselves
and all others similarly situated,

Plaintiffs,

-against-

NATIONAL GRID USA, NATIONAL GRID
NORTH AMERICA INC., NATIONAL
GRID PLC, NATIONAL GRID USA
SERVICE COMPANY, INC., NATIONAL
GRID ELECTRIC SERVICES, LLC,
BOSTON GAS COMPANY, COLONIAL
GAS COMPANY, ESSEX GAS COMPANY,
KEYSPAN CORPORATION, KEYSPAN
GAS EAST CORPORATION,
MASSACHUSETTS ELECTRIC
COMPANY, NANTUCKET ELECTRIC
COMPANY, NIAGARA MOHAWK
HOLDINGS, INC., NIAGARA MOHAWK
POWER CORPORATION, THE
BROOKLYN UNION GAS COMPANY,
AND THE NARRAGANSETT ELECTRIC
COMPANY,

Defendants.

: Hon. Joanna Seybert, U.S.D.J.

: Civil Action No. 15-cv-1219 (JS)(GRB)

: **DEFENDANTS' NOTICE OF MOTION**
: **TO DISMISS PLAINTIFFS' SECOND**
: **AMENDED COMPLAINT**
: **(ORAL ARGUMENT REQUESTED)**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendants’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 8, 12(b)(6), 12(b)(1), 12(b)(2), and 12(f) and the May 19, 2016 Declaration of Richard H. Brown and exhibit thereto, Defendants¹ hereby move before the Honorable Joanna Seybert, U.S.D.J. of the United States District Court for the Eastern District of New York, at the Alfonse M. D’Amato Federal Building, 100 Federal Plaza, Central Islip, NY 11722 for the relief set forth below, on a date and at a time to be scheduled by this Court.

1. All Defendants move pursuant to Fed. R. Civ. P. 8 and 12(b)(6) to dismiss Count 2 of the Second Amended Complaint;

2. All Defendants move pursuant to Fed. R. Civ. P. 8, 12(b)(6) and 15 to dismiss Count 4 of the Second Amended Complaint;

3. All Defendants move pursuant to Fed. R. Civ. P. 8 and 12(b)(6) to dismiss Plaintiff Jarrett Jenkins’ claim under Count 1 of the Second Amended Complaint;

4. All Defendants move pursuant to Fed. R. Civ. P. 8 and 12(b)(6) to dismiss Plaintiff Frances Royal’s claim under Count 4 of the Second Amended Complaint;

5. All Defendants move pursuant to Fed. R. Civ. P. 12(f) to strike footnote 1 and ¶ 30 of the Second Amended Complaint;

6. Twelve Defendants (National Grid USA, National Grid North America Inc., National Grid plc, National Grid Electric Services LLC, Boston Gas Company, Colonial Gas

¹ Although 12 of 16 Defendants had been dismissed in the Court’s March 31, 2016 Order for lack of standing, Plaintiffs have again named the 16 “National Grid entities” as defendants in the Second Amended Complaint. Plaintiffs claim it was done only to preserve appellate rights but, as discussed in the accompanying Memorandum of Law, there was no need to preserve Plaintiffs’ appellate rights. Notwithstanding Plaintiffs’ attempted limitation, the Second Amended Complaint in fact names all 16 entities as defendants on all claims.

Company, Essex Gas Company, KeySpan Corporation, Massachusetts Electric Company, Nantucket Electric Company, Niagara Mohawk Holdings, Inc., and The Narragansett Electric Company move pursuant to Fed. R. Civ. P. 12(b)(1) to dismiss the Second Amended Complaint because Plaintiffs lack standing to assert claims against them;² and

3. Nine Defendants (National Grid USA, National Grid North America Inc., Massachusetts Electric Company, The Narragansett Electric Company, Boston Gas Company, Colonial Gas Company, Essex Gas Company, Nantucket Electric Company, and National Grid plc) move to dismiss the Second Amended Complaint against them pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.³

PLEASE TAKE FURTHER NOTICE that all Defendants request oral argument on the foregoing motions.

Dated: May 19, 2016

Respectfully submitted,

DAY PITNEY LLP
7 Times Square
New York, NY 10036
Telephone: (212) 297-5800
amarchetta@daypitney.com
rbrown@daypitney.com

By: /s/ Richard H. Brown
Richard H. Brown
Attorneys for All Defendants

² As discussed in Defendants' Memorandum, for their lack of standing motion, these 12 Defendants rely on the papers filed in connection with their August 24, 2015 Motion to Dismiss Plaintiffs' First Amended Complaint (ECF Doc. # 135-1, 135-2, and 149).

³ As discussed in Defendants' Memorandum, for their the lack of personal jurisdiction motion, these nine Defendants rely on the papers filed in connection with their August 24, 2015 Motion to Dismiss Plaintiffs' First Amended Complaint (ECF Doc. # 135-1, 135-2, and 149).

CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of Defendants' Motion and Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to Fed. R. Civ. P. 8, 12(b)(6), 12(b)(1), 12(b)(2), and 12(f), and supporting papers, were filed with the Clerk of the Court and served electronically in accordance with the Federal Rules of Civil Procedure, the Eastern District of New York's Local Rules, and the Eastern District of New York's Rules on Electronic Service upon counsel of record.

/s/ Richard H. Brown

RICHARD H. BROWN

DAY PITNEY LLP

7 Times Square

New York, NY 10036

Telephone: (212) 297-5800

rbrown@daypitney.com

DATED: May 19, 2016